REMARKS/ARGUMENTS

The Examiner is thanked for his review of the application.

Claims 1, 3-7, 9-14, 16-21, 25-27 and 29 remain in this application. Claims 1 and 21 have been amended. No new matter has been added.

35 U.S.C. §101

In the Office Action dated February 3, 2010, the Examiner has rejected Claims 1, 3-7 and 9-13 under U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Regarding this rejection, the Examiner has stated that "Particularly, claim 1 is system claim, which falls under the machine or apparatus statutory class. However, the body of the claim contains software items which are not stored in computer readable medium. For example, claim 1 recites a database performing the step of storing initial prices. According to Microsoft Computer Dictionary, a database is: a file composed of records, each containing fields together with a set of operations for searching, sorting, recombining, and other functions. Other components that appear to be software are a modeling engine, a subset generator and an optimizer. Software by itself can not be structural limitation of hardware component."

It has been found that "claimed process is surely patent-eligible under §101 if: (1) it is tied to a particular machine or apparatus or (2) it transforms a particular article into a different state or thing." *In re Bilski*, F.3d (Fed. Cir. 2008) (*en banc*). This is known as the "machine or transformation" test.

Claim 1 has been amended to recite "a modeling engine creating, using a processor, a demand model." Support for the amendments may be found at page 119, lines 1-15 of the specification as filed which states, in relevant part, "FIG'S. 7A and 7B illustrate a computer system 900, which is suitable for implementing embodiments of the present invention ... FIG. 7B is an example of a block diagram for computer system 900. Attached to system bus 920 are a wide

variety of subsystems. Processor(s) 922 (also referred to as central processing units, or CPUs) are coupled to storage devices, including memory 924."

Applicants believe that amendments to Claim 1 tie the method claim to a statutory class. In particular, the method is directed as being computer implemented, utilizing a processor. Thus, the method of Claim 1 is believed allowable for at least these reasons. Likewise, claims 3-7 and 9-13 are believed allowable for depending upon an allowable parent claim.

35 U.S.C. §112 – 2nd Paragraph

In the same Office Action, the Examiner rejects claims 1, 3-7, 9-13 and 21 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding this rejection, the Examiner states "In particular claim 1 contains the limitation of: '*a subset generator designating a subset of products of the plurality of products, wherein the number of products in the subset of products is less than the number of products in the plurality of products, the subset being designated by solving an integer problem, and wherein the subset generator is also configured to enable a number N to be designated and the subset generator is also configured to select no more than N products of the plurality of products to form the subset of products, and wherein the selected no more than N products has the largest impact on a business objective optimization of prices of any subset of no more than N products of the plurality of products, wherein the business objective is at least one of profit maximization, and sales volume*'. It's not clear to one of ordinary skilled in the art as to what exactly is the actual limitation. Correction is requested."

The Examiner further states "Similarly, claim 21 contains the limitation of: '*receiving, using the computer, new prices for the subset of products of the product category, wherein the subset is smaller than the product category, wherein the received new prices are generated by storing initial prices for a plurality of products, designating a subset of products of the plurality of products, wherein the number of products in the subset of products is less than the number of products in the plurality of products, the subset being designated by solving an integer problem, and wherein the designation of the subset of products includes allowing a number N to be designated and selecting no more than N products of the plurality of products to form the subset of products, and wherein the*

selected no more than N products has the largest impact on a business objective optimization of prices of any subset of no more than N products of the plurality of products, wherein the business objective is at least one of profit maximization, and sales volume goal'. It's not clear to one of ordinary skilled in the art as to what exactly is the actual limitation. Correction is requested."

Claims 1 and 21 have been amended to better reflect the allowable limitations as presented in Claim 14. Particularly, Claims 1 and 21 have been amended to recite "[a subset generator configured to perform the steps of: **designating,** using the processor, **a subset of products** of the plurality of products, wherein the number of products in the subset of products is less than the number of products in the plurality of products, the designating a subset of products comprising:] **generating a set of candidate products** of the plurality of products; designating a number N; **determining which N products of the candidate products have the largest impact on a business objective** by solving an integer problem, wherein the business objective is at least one of profit maximization, and sales volume goal; and **selecting no more than N products of the plurality of products to form the subset of products** using the determination of which N products have the largest impact on the business objective;" (Emphasis Added). Support for these amendments may be found in Claim 14.

Claims 1 and 21, as amended, are believed to be definite as to the content of the claim. Further, it is believed these claims, as amended, are sufficiently clear to one skilled in the art as to what exactly is the actual limitation. As such, claims 1 and 21 are believed allowable for at least these reasons.

35 U.S.C. §103

Further, the Examiner stated that Claims 1, 3-7, 9-13 and 21 are rejected under 35 US.C. 103(a) as being unpatentable over Ouimet et al., (US. Patent No. 6,094,641) ("Ouimet") in view of Hartman et al., (US. Patent No. 5,987,425) ("Hartman") and Delurgio et al., (U.S. Patent No. 6,553,352) ("Delurgio").

Regarding claims 1, 3-7, 9-13 and 21, the Examiner states "Ouimet teaches a computer implemented method for computing a preferred set of prices ... Hartman et al. teach deriving optimal prices for a plurality of products by dividing subsets according to department and price sensitivity (abstract; figure 5; column/line 2/57-3/49; column/line 4/35-5/25). Regarding, the selection of a subset of products, Hartman et al. teach product subsets being determined by 'experienced retailers' who have a 'good feel for the price sensitivity of items' in a product line ('425, column 5, lines 48-64)."

Applicants believe the amendments to Claims 1 and 21, as noted above, render the Examiner's rejections moot. Further, by mirroring the limitations of allowable Claim 14, Applicants believe that the Claims of 1 and 21, as amended, are now likewise allowable. Claims 3-7, 9-13 are likewise believed allowable for depending upon an allowable parent claim.

In sum, base claims 1 and 21 have been amended and are now believed to be allowable. Dependent claims 3-7, 9-13, 16-20, 25-27 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent claims 1, 14, 21 for at least the same reasons. Applicants believe that all pending claims 1, 3-7, 9-14, 16-21, 25-27 and 29 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner.

Applicants hereby petition the Examiner for a one-month extension of time with which to respond to the referenced Office Action and have authorized the commissioner via EFS to charge our credit card in the total amount of $130.00 to cover this cost. The commissioner is authorized to charge any additional fees that may be due or credit any overpayment to our Deposit Account No. 50-2766 (Order No. DT-0110). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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